

RECEIVED  
WILLIAM T. WALSH, CLERK  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

2005 JAN -3 P 2:55

SCHWARZ PHARMA, INC., SCHWARZ  
PHARMA AG and WARNER-LAMBERT  
COMPANY,

Plaintiffs,

v.

TEVA PHARMACEUTICALS USA, INC.,

Defendant.

UNITED STATES  
DISTRICT COURT  
Civil No. 04-1657 (DRD)

**ORDER**

Plaintiffs Schwarz Pharma, Inc. and Schwarz Pharma AG ("Schwarz Pharma") having moved pursuant to Fed. R. Civ. P. 12(b)(6) and 12(f) to strike from defendant, Teva Pharmaceutical USA, Inc.'s ("Teva") Answer, Separate Defenses and Counterclaims the First, Second (in part), Third and Fourth Affirmative Defenses; to strike in part paragraph 9 of Teva's Answer; to dismiss Teva's First Counterclaim in part and to dismiss in their entirety Teva's Second through Eighth Counterclaims; and plaintiff Warner-Lambert Company ("Warner-Lambert") having moved pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing all of Teva's Counterclaims from its Amended Answer; and the parties having signed a stipulation and order dismissing without prejudice the Second through Eighth Counterclaims; and the court having reviewed the submissions of the parties and heard argument of counsel, and for the reasons set forth in an opinion of even date, including the opinion attached thereto as an appendix;

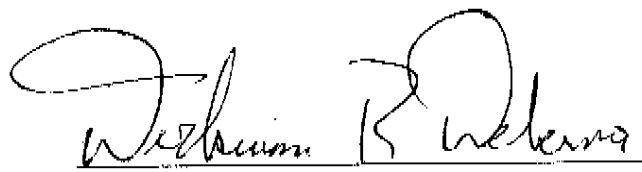
IT is this 4<sup>th</sup> day of January 2005,

**ORDERED as follows:**

1. Schwartz Pharma's and Warner-Lambert's motions are granted in the manner set forth in the following paragraphs:

a. The First, Third and Fourth Affirmative Defenses shall be stricken.

b. There shall be stricken from the First Counterclaim: (i) the words "Patent Invalidity, Unenforceability and" appearing in the title and (ii) paragraphs 19, 20 and 21 except that paragraph 21 shall retain the words: "Teva is entitled to a Declaratory Judgment that the '450 patent will not be infringed by the medicine Teva seeks to manufacture and sell pursuant to the ANDA application Teva has filed."

  
DICKINSON R. DEBEVOISE  
U.S.S.D.J.